

Decision 03-06-065 June 19, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company Submitting Electric Rate Proposal for Direct Access Services Described in Decision 97-10-087.	Application 99-06-033 (Filed June 18, 1999)
Application of Southern California Edison Company for Authority to Establish Direct Access Service Fees for Competitive and Regulated Services.	Application 99-06-040 (Filed June 23, 1999)
Application of San Diego Gas & Electric Company for Authority to Implement Discretionary, Non- Discretionary, and Exception Service Fees.	Application 99-06-041 (Filed June 24, 1999)
Application of Pacific Gas and Electric Company Submitting Electric Revenue Cycle Services Cost and Rate Proposals in Compliance with Decision 98-09- 070.	Application 99-03-013 (Filed March 5, 1999)
Application for Commission Consideration of Post- Transition Proposals for Long-Run Marginal Cost Pricing and Geographic De-Averaging of Revenue Cycle Services.	Application 99-03-019 (Filed March 5, 1999)
Application of Southern California Edison Company (U 338-E) Relating to Long-Run Marginal Costs for Unbundled Metering and Billing Services.	Application 99-03-024 (Filed March 5, 1999)
Order Instituting Rulemaking on the Commission's Own Motion to Consider the Line Extension Rules of Electric and Gas Utilities.	Rulemaking 92-03-050 (Filed March 31, 1992)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

We award The Utility Reform Network (TURN) \$82,489.28 in compensation for its contribution to these cases (and an earlier proceeding) before the proceedings were dismissed without prejudice in Decision (D.) 03-01-072. We also award Golden State Power Cooperative (Golden State) \$31,233.94 in compensation for its contribution in the same six cases that were dismissed in D.03-01-072.

I. Background

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) each filed two applications during 1999 for ratesetting concerning the pricing of revenue cycle services (RCS) and for setting direct access service fees (DASF). These applications were in response to Assembly Bill (AB) 1890 and our contemporaneous decisions restructuring the electric industry. Both TURN and Golden State sought and were granted intervenor status, and both organizations participated actively and productively in the proceedings. When the energy crisis engulfed California in mid-2000, hearings in these proceedings were already concluded. The applicants and the intervenors also had filed opening and reply briefs. Thereafter, the proceedings lay dormant but were revived briefly when we invited comments on how to proceed in these cases given the changed circumstances in the electric industry. The applicants all suggested dismissing the proceedings. The intervenors did not comment. On January 30, 2003, we indeed dismissed the proceedings, without prejudice in D.03-01-072.

TURN filed its request for compensation on March 25, 2003. Golden State filed its initial request on March 28, 2003, and supplemented its filing on April 7, 2003. As part of its request, TURN also seeks compensation for its work in a

different proceeding, Rulemaking (R.) 92-03-050, which is a rulemaking proceeding involving line extensions. After D.99-12-046 was issued in R.92-03-050, TURN sought to recover half of its costs and expenses in that proceeding, as well as our permission to seek its remaining costs and expenses in these RCS proceedings. In D.00-05-017, we determined that TURN's proposed division of costs and expenses was reasonable. We awarded compensation for half of the hours and expenses sought in R.92-03-050, and granted TURN our permission to seek the remaining half of its costs and expenses in these proceedings. We note that R.92-03-050 has not been consolidated with the RCS and DASF applications.

Edison objected to TURN's compensation request and TURN replied to the objection. Golden State's application for compensation is unopposed.

II. Procedural and Substantive Requirements

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires that the applicant satisfy all of the following procedures and criteria to obtain a compensation award:

1. The applicant must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Pub. Util. Code § 1802(b).)
2. The applicant must satisfy certain procedural requirements including the filing of a sufficient notice of intent to claim compensation within thirty days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (*Id.* § 1804(a).)
3. The applicant must file and serve a request for a compensation award within sixty days of our final order or decision in a hearing or proceeding. (*Id.* § 1804(c).)
4. The applicant must demonstrate significant financial hardship. (*Id.* § 1804(b)(1).)

5. The applicant must have made a substantial contribution to the proceeding, such as through the adoption, in whole or in part, of a Commission order or decision. (*Id.* § 1803(a).)
6. The claimed fees and costs are comparable to the market rates. (*Id.* § 1806.)

We evaluate the applicants' requests based on these criteria. For convenience, we consider criteria 1-3 together (procedural criteria), followed by separate discussions of the remaining requirements: financial hardship, substantial contribution to the proceedings, and the reasonableness of the requests.

A. Procedural Criteria

TURN filed its notice of intent to claim compensation on June 2, 1999. The Administrative Law Judge's (ALJ) November 3, 1999, ruling determined that TURN is a customer under the Public Utilities Code. The ruling also established that TURN's notice of intent was sufficient and timely filed. TURN's subsequent request for compensation was filed on March 25, 2003, within 60 days of our final decision of January 30, 2003. TURN has satisfied all the procedural requirements necessary to make its request for compensation.

On May 23, 2000, the ALJ granted Golden State permission to file a late notice of intent to seek compensation. The permission for a late filing was expressly conditioned on Golden State later establishing that it is a customer or an entity representing customers, as required by Pub. Util. Code § 1802(b). In another proceeding before us, we recently determined that Golden State does indeed satisfy § 1802(b); and we apply that determination here. (*See* D.02-06-014, *Application of Southern California Edison Co.*, No. A.00-11-038 *et al.* (June 6, 2002).) Golden State filed its request for compensation within 60 days of our January 30, 2003, decision. Golden State also has satisfied all the procedural requirements necessary to make its request for compensation.

B. Financial Hardship

An applicant for compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).) Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation. (*Id.* § 1804(b).)

In its notice of intent to claim compensation in these proceedings, TURN asserted financial hardship. The ALJ ruled that TURN's financial hardship had been determined in January 1999, in a separate proceeding (A.98-09-033), within one year preceding its notice of intent in these proceedings. The January 1999 determination resulted in a presumption of hardship here. Since the presumption was not rebutted, it was sufficient to establish TURN's hardship eligibility in these proceedings.

Similarly, within the last year, we determined that without compensation, Golden State would be burdened by significant financial hardship in participating in proceedings before the Commission. (*See* D.02-06-014, *Application of Southern California Edison Co.*, No. A.00-11-038 *et al.* (June 6, 2002).) Because Golden State's membership has changed since we awarded compensation in D.02-06-014, we asked the organization to submit supplemental information to verify its continuing significant financial hardship for purposes of its compensation request. We determine significant financial hardship by reviewing the annual utility bills of the individual members to ascertain whether the cost of effective participation is great in comparison to the economic interest of any of the individual members.

In D.02-06-014, we calculated the percentage of organizational members with annual utility bills of less than \$50,000 in order to comply with the mandate of Pub. Util. Code § 1812 to not disqualify an association that represents both the interests of small and large customers. Golden State has provided us with updated information on its membership; and, based on that information, we now calculate that the organization is eligible to recover a slightly increased amount: 98.9% (18,239/18,447). (*See* D.95-02-093; D.98-02-099.) Thus, we continue to conclude that participation by Golden State without an award of compensation would impose a significant financial hardship on its members.

C. Substantial Contribution to Proceedings

We now turn to whether the intervenors substantially contributed to the proceedings, an inquiry made difficult because we dismissed the underlying proceedings before reaching a final decision. Indeed, Edison has objected to TURN's compensation request because the company believes "the theory that an eligible intervenor who participates in a proceeding, which is later dismissed due to extenuating circumstances, should receive some measure of compensation" is unsupported by the authorizing statute. (Southern California Edison Co., Response to Request for an Award of Compensation at 2 (April 24, 2003).)

In appropriate cases, we have rejected Edison's argument; and we do so again here. In D.02-08-061, we applied several factors urged by TURN to find a substantial contribution to a proceeding that was also concluded prior to a final decision:

- The circumstances leading to the proceeding's conclusion,
- The intervenor's past record of demonstrating a substantial contribution to our decisions,
- The appropriateness of the intervenor's participation in the underlying proceeding, and

- The reasonableness of the intervenor's participation.

While we acknowledged in A.00-01-009 that these factors may not always be appropriate, we believe that the similarity of the parties, the circumstances surrounding the termination of the proceedings (the 2000 California energy crisis), and the recent date of our earlier decision all argue for applying these same factors here.

The reasons for our compensation award in D.02-08-061 (which provides a more detailed explanation of our reasoning) are equally true here:

The circumstances that led to our [termination of the proceeding] are largely associated with the California electricity crisis that began in 2000. Those circumstances could not have been foreseen or affected by TURN or any other party at the time that TURN commenced its participation in this proceeding. . . .

Denying TURN any compensation . . . simply because circumstances beyond its control led to dismissal of the application would be both unfair and inconsistent with the intent of the intervenor compensation statutes. Moreover, doing so could potentially discourage [intervenors] from participating in future proceedings.

(D.02-08-061, at 7.)

Both TURN and Golden State have demonstrated significant contributions to our decisions in the past, as indicated by our prior compensation awards to both organizations. Both intervenors appropriately sought to participate in these proceedings since the cases involved major policy issues concerning the restructuring of California's electric markets including the provision of direct access services. Both intervenors participated reasonably and productively in the proceedings, demonstrated most significantly by their

advocacy in the evidentiary hearings conducted in April and May 2000 and during the post-hearing briefing process.

Contrary to Edison's argument, we believe our interpretation of the statute accommodates unusual circumstances not envisioned by the Legislature and advances the underlying purposes of the intervenor compensation program. Pub. Util. Code § 1801.3(b) requires that "the provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." Indeed, the legislative intent emphasizes "a substantial contribution to *proceedings* of the commission," as determined by us in our orders and decisions. (*Id.* § 1801.3(d) (emphasis added).) Consequently, in applying the factors enumerated above, we determine that both TURN and Golden State made substantial contributions to the proceedings of the Commission. (*Id.*) Otherwise, intervenors who participated in good faith and at great expense in our proceedings would be in perpetual jeopardy of having a particular proceeding dismissed upon the whim of a disgruntled applicant.

D. Reasonableness of Requested Contribution

1. TURN's Request

TURN requests compensation in the amount of \$74,528.03 as follows for the RCS/DASF proceeding:

Attorney Fees

Robert Finkelstein	188.5 hours @ \$280/hour	\$52,780.00
	4.5 hours @ \$265/hour	1,192.50
	7.25 hours @ \$170/hour	1,232.50
Michel P. Florio	1.25 hours @ \$300/hour	375.00
Marcel Hawiger	0.75 hours @ \$185/hour	138.75
	Subtotal:	55,718.75

Expert Witness Costs

William Marcus	30.00 hours @ \$150/hour	4,500.00
Jeff Nahigian	132.25 hours @ \$95/hour	12,563.75
Expenses		410.96
	Subtotal:	17,474.71

Other Reasonable Costs

Photocopying expense		1,162.20
Postage costs		137.97
Facsimile/Phone		34.40
	Subtotal:	1,334.57
	Total:	\$74,528.03

TURN requests compensation in the amount of \$7,961.25 as follows for the RCS Phase of Line Extension Rulemaking Proceeding (after reviewing D.00-05-017, we have corrected the calculation of Finkelstein's claim):

Attorney Fees

Robert Finkelstein	½ x 51.75 hours @ \$265/hour	\$6,856.88
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Expert Witness Costs

Jeff Nahigian	½ x 23.25 hours @ \$95/hour	1,104.37
	Total:	\$7,961.25

The grand total of TURN's request, as corrected, is \$82,489.28.

We believe the components of this request constitute reasonable fees and costs when compared to market rates for similar goods and services. The claimed hourly rates for attorneys Finkelstein, Florio, and Hawiger are the

hourly rates we have approved previously for these attorneys. (*See, e.g.*, D.00-11-002 (Finkelstein hourly rate of \$280 for 2000), D.99-11-049 (Florio hourly rate of \$300 for 1998-99), and D.01-03-042 (Hawiger hourly rate of \$185 for 2000).) Similarly, in prior proceedings, we have approved the same hourly rates claimed here for expert witnesses Marcus and Nahigian. (*See, e.g.*, D.00-05-006 (Marcus hourly rate of \$150 for 1999-2000), D.00-05-006 (Nahigian hourly rate of \$95 for 1999-2000).) The other claimed expenses are modest for proceedings of this scope. All services and other expenditures are documented in detail in attachments to TURN's request.

2. Golden State's Request

Golden State Power requests compensation in the amount of \$31,706.10 as follows, corrected to \$31,705.20 as the result of a minor miscalculation:

Attorney Fees

Irene Moosen	50.65 hours @ \$185/hour	\$9,370.25
Dian Grueneich	24.10 hours @ \$200/hour	4,820.00
Dian Grueneich	2.4 hours @ \$110/hour	264.00
Expenses		300.00
	Subtotal:	14,754.25

Expert Witness/Policy Analyst Costs

Jody London	.75 hour @ \$175/hour	131.25
Jody London	10.24 hours @ \$90/hour	921.60
Richard McCann	92.0 hours @ \$150/hour	13,800.00
Expenses		600.00
	Subtotal:	15,452.85

Other Reasonable Costs

Photocopying expense		719.54
Other expenses		778.56
	Subtotal:	1,498.10
	Total:	\$31,705.20

With one exception, the fees and expenses claimed by Golden State are also reasonable and comparable to market rates and prices. We have previously awarded attorneys Moosen and Grueneich the same hourly amounts they claim here. (*See* D.02-06-014 (\$220 per hour for Grueneich in 2001; \$185 per hour for Moosen in 2001).) Also, we have awarded expert witness McCann the same hourly rate claimed here. (*Id.* \$150 per hour for McCann in 2001.)

We have not previously ruled on a claim involving policy analyst London whose hourly rate is claimed at \$175 per hour for 2000 and \$180 per hour for 2003 (claimed at one-half rate here for the preparation of the intervenor claim). London has 13 years of experience in the energy industry including 6 years on the Commission's own staff. By comparison, Golden State seeks a rate of \$150 per hour for its other expert witness, Richard McCann, who has a PhD in Agricultural and Resource Economics. As previously noted, we have awarded him compensation at that rate in the past. In this decision, we are compensating TURN's senior expert witness, William Marcus (who has approximately thirty years experience), at the rate of \$150 per hour. We conclude that London is reasonably compensated at the rate of \$150 per hour for her services in 2000 and \$160 per hour for her services in 2003 (based on the Bureau of Labor Statistics' Consumer Price Index). This modification reduces London's compensation by \$122.50.

Golden State's compensation request also includes comprehensive and detailed schedules enumerating the dates and purpose of the services and other expenditures incurred in these proceedings. We find these fees and expenses to be reasonable.

III. Awards

We award TURN \$82,489.28 and Golden State \$31,233.94. Our calculation is based on the hourly rates described above plus the other costs. The Golden State award is based on 98.9% of its total corrected claim of \$31,705.20, to account for the calculation required by Pub. Util. Code § 1812, further reduced by our adjustment in London's compensation.

Consistent with previous Commission decisions, we will order that, after June 10, 2003 (the 75th day after TURN filed its compensation request), interest be paid on TURN's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15. We will order that, after June 23, 2003 (the 75th day after Golden State filed a complete compensation request), interest be paid on Golden State's award calculated in the same fashion. Interest will continue on these awards until the utilities make full payment.

We remind both intervenors that Commission staff may audit their records related to this award. Thus, each intervenor must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

IV. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

V. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Mark S. Wetzell is the assigned ALJ in A.99-06-033, A.99-06-040, A.99-06-041, A.99-03-013, A.99-03-019, and A.99-03-024. Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick is the assigned ALJ in R.92-03-050.

Findings of Fact

1. TURN represents consumers, customers, or subscribers of PG&E, Edison, and SDG&E, all utilities regulated by the Commission.
2. Golden State represents consumers, customers, or subscribers of PG&E, Edison, and SDG&E, all utilities regulated by the Commission.
3. TURN filed its notice of intent to claim compensation on June 2, 1999, and its request for compensation on March 25, 2003, for its contributions to the proceedings in A.99-06-033 *et al.* and R.92-03-050.
4. Golden State filed its notice of intent to claim compensation on May 23, 2000, and on March 28, 2003, supplemented on April 7, 2003, for its contribution to the proceedings in A.99-06-033 *et al.*
5. The individual economic interests of TURN's members are small in comparison to the costs incurred in effectively participating in these proceedings.
6. The individual economic interests of Golden State's members are small in comparison to the costs incurred in effectively participating in these proceedings. The ratio of Golden State's members with annual utility bills of less than \$50,000 to Golden State's total membership is 18,239/18,447 or 98.9%.
7. TURN participated continuously and extensively in these cases until the proceedings were terminated.
8. Golden State participated continuously and extensively in these cases until the proceedings were terminated.
9. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for persons with comparable training and experience. TURN's other proceeding-related expenses are reasonable. The total of these reasonable fees and expenses is \$82,489.28.
10. With our adjustment in the hourly rate for one expert, Golden State has requested hourly rates for attorneys and experts that are no greater than the

market rates for persons with comparable training and experience. Golden State's other proceeding-related expenses are reasonable. The total of these reasonable fees and expenses, after our adjustment, is \$31,233.94.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions in A.99-06-033 *et al.* and D.00-05-017.

2. Golden State also has fulfilled the requirements of Pub. Util. Code §§ 1801-1812 and is entitled to compensation of 98.9% of its reasonable fees and expenses incurred in making a substantial contribution in A.99-06-033 *et al.*

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$82,489.28 as compensation for its substantial contributions in Application (A.) 99-06-033 *et al.* and Decision 00-05-017.

2. Golden State Power Cooperative (Golden State) is awarded \$31,233.94 as compensation for its substantial contribution in A.99-06-033 *et al.*

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall each pay TURN the respective utility's share of TURN's total award. The shares shall be computed on the basis of each utility's percentage (measured in kilowatt-hours) of the total retail sales of electricity in 2000 (the year most costs were incurred) for all three utilities.

4. Within 30 days of the effective date of this decision, PG&E, Edison, and SDG&E shall each pay Golden State the respective utility's share of Golden

State's total award. The shares shall be computed on the basis of each utility's percentage (measured in kilowatt-hours) of the total retail sales of electricity in 2000 (the year most costs were incurred) for all three utilities.

5. In the event TURN's award is not fully paid by June 10, 2003, each utility having a balance due TURN shall also pay interest on the remaining balance due under the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, continuing until full payment is made.

6. In the event Golden State's award is not fully paid by June 23, 2003, each utility having a balance due Golden State shall also pay interest on the remaining balance due under the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, continuing until full payment is made.

7. The comment period for today's decision is waived.

8. A.99-06-033, A.99-06-040, A.99-06-041, A.99-03-013, A.99-03-019, and A.99-03-024 are closed.

This order is effective today.

Dated June 19, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0306065
Contribution Decisions:	D0301072 D0005017
Proceedings:	A9906033 A9906040 A9906041 A9903013 A9903019 A9903024 R9203050
Author:	ALJ Wetzell; ALJ Patrick (R9203050 only)
Payers:	Southern California Edison Company Pacific Gas and Electric Company San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Disallowance
The Utility Reform Network	3/25/2003	\$74,528.03 (D0301072)	\$74,528.03	
	3/25/2003	\$7,961.25 (D0005017)*	\$7,961.25	
Golden State Power Cooperative	3/28/2003	\$31,705.20 (D0301072)*	\$31,233.94	Failure to justify hourly rate; § 1812 adjustment

* Corrected claims

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	\$280	2000	\$280
Robert	Finkelstein	Attorney	The Utility Reform Network	\$265	1998	\$265
Robert	Finkelstein	Attorney	The Utility Reform Network	\$340	2003	\$340
Michel	Florio	Attorney	The Utility Reform Network	\$300	1998-1999	\$300
Marcel	Hawiger	Attorney	The Utility Reform Network	\$185	2000	\$185
William	Marcus	Economist	The Utility Reform Network	\$150	2000	\$150
Jeff	Nahigian	Economist	The Utility Reform Network	\$95	2000	\$95
Irene	Moosen	Attorney	Golden State Power Cooperative	\$185	1999-2000	\$185
Dian	Grueneich	Attorney	Golden State Power Cooperative	\$200	1999-2000	\$200
Dian	Grueneich	Attorney	Golden State Power Cooperative	\$220	2003	\$220
Jody	London	Policy Expert	Golden State Power Cooperative	\$175	2000	\$150
Jody	London	Policy Expert	Golden State Power Cooperative	\$180	2003	\$160
Richard	McCann	Economist	Golden State Power Cooperative	\$150	2000	\$150